IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 6790/2002 & CM 276/2004

SUB. TIRATH PAL SINGH ..... Petitioner
Through: Mr. N.L. Bareja, Adv.

versus

UOI & ORS. ..... Respondents
Through: Mr. Ashwani Bhardwaj, Adv.

Date of Decision : October 25, 2007

CORAM:
HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE MR. JUSTICE S.L. BHAYANA

1. Whether reporters of local papers may be allowed to see the Judgment? No

2. To be referred to the Reporter or not? Yes

3. Whether the Judgment should be reported in the Digest? Yes

VIKRAMAJIT SEN, J. (Oral)

J U D G M E N T

1. The prayers in this writ petition are that the Show Cause Notice dated 8.4.2000 be declared as illegal and non est, not being in compliance with Rule 13 (3)(I)(iii)(b) of the Army Rules, 1954 (for short Army Rules); and the Order dated 24.4.2000

whereby the petitioner was discharged and Struck off Strength from the Army be quashed inter alia since it had not been given effect to with due exercise of mind; and consequently that the petitioner should be reinstated into service.

2. This is thus the second round of litigation initiated by the petitioner. The grievance in the first petition against his discharge from the Army was by way of Writ Petition No.1353/1994 which was allowed by Orders dated 15.2.1999. The gravamen of the Order was that the Respondents had violated Rule 13(3)(iii) of the Army Rules for the reason that the Discharge Order was mandatorily to be signed by the General Officer Commanding-in-Chief. K. Ramamoorthy, J. had opined that - “In the case of JCOs concerned of other classes of discharge category, the officers mentioned in column 3(b) alone can pass the order. Before passing the order the officer concerned has to give notice to the candidate. These two things are absent in this case. Therefore, the order of discharge is liable to be quashed”. As a consequence of the decision in the first litigation, the petitioner has received all backwages amounting to Rs.4,59,449/- for the period upto his reinstatement.

3. Thereafter, the petitioner has been discharged by Orders dated 24.4.2000 which states that his "discharge has been sanctioned by the Army Cdr Eastern Command on 24 Apr 2000 as intimated by CEEC vide their letter No. HF-131367/1/MON/Engrs/E1C(I) dated 24 Apr 2000 and struck off Strength from the Army with effect from 24 Apr 2000 (Afternoon)". The challenge to this Order is two-fold. Mr. Bareja, learned counsel for the petitioner, firstly stresses on the fact that the Show Cause Notice issued to the petitioner in terms of the letter dated 8.4.2000 has been signed by Brig(Pers & Adm). It is his contention that the Show Cause Notice must compulsorily have been authored and signed by the person competent to dismiss/discharge the petitioner, i.e., General Officer Commanding-in-Chief, if not below the rank of Lieutenant General. In this regard reliance has been placed on the *Union of India -vs- Harish Chandra Goswami*, (1999) 4 SCC 575 and, in particular, to paragraph 8 thereof. We are of the view that this decision is of no avail or applicability to the facts of the present case. Their Lordships were called upon to construe Army Rule 37(3) which specifically states that the convening of a General or District Court-martial must be effected by a particular officer. We are not dealing with that

provision in the present case. So far as the particular Rule, which we are concerned with, it stipulates that if the discharge is not at the request of the petitioner/JCO, the General Officer Commanding-in-Chief, (the competent authority), before sanctioning the Discharge shall, if the circumstances of the case permit, give the JCO concerned an opportunity to show cause against the order of Discharge. In the case in hand we are not called upon to decide whether an officer of the rank of Brigadier was competent to issue a Show Cause Notice which would eventually culminate in an order of Discharge. This is for the simple reason that the Show Cause Notice dated 8.4.2000 specifically mentions that it has been signed for General Officer Commanding-in-Chief. Therefore, even if a very narrow and pedantic construction to Rule 13 (3)(iii) is to be carried out, the Show Cause Notice must be held to have been issued by the General Officer Commanding-in-Chief himself. There may not be any infirmity in doing so, provided the competent officer had directed the issuance of the Show Cause Notice and had also given the response thereto due consideration.

4. The second question is that in the previous round of litigation there had been no mention of an ACR for the year

1992-93. The contention of Mr. Bareja is that the petitioner was fully entitled in law to receive further extension(s). Furthermore, since the petitioner has already "served" for the maximum contractual period of ten years, the petitioner was eligible for regularisation into the Army. We have repeatedly called upon the learned counsel for the petitioner to show us any Rule or Regulation which creates a right in favour of the petitioner, who joined the services of the Indian Army on a contract basis, to claim regularisation. So far as the Rules are concerned they prescribe a maximum period of ten years for contractual service. The previous Order of Discharge was predicated on various factors, including the ACR ratings of the petitioner as well as observations and noting in the Pen Picture of his excessive drinking and association with prostitutes. So far as that material is concerned the learned Single Judge, who allowed the previous writ petition, did not go into the merits or demerits of the assessment. The writ petition was allowed on the simple score of the Discharge Order not having been taken by the General Officer Commanding-in-Chief.

5. It has been correctly pointed out by Mr. Ashwani Bhardwaj, learned counsel for the Respondent, that there was

sufficient material on the record for not extending the contractual services of the petitioner. Learned counsel for the petitioner has drawn our attention to Annexure P-4 dated 29.12.1969 which speaks of absorption of direct entry JCOs regular engagement. So far as these Orders are concerned they clearly stipulate that selection of direct entry JCOs would be on the basis of the Recommendations of the Officer Commanding/Chief Engineer, Commanding and the performance of such JCOs as recorded in their ACRs. The Officer concerned has not recommended even the extension of the petitioner's contractual engagement, what to speak of his regular absorption. Similarly, the letter of the Army Headquarters dated 4.5.1992 clearly envisages that there must be a Recommendation in favour of the petitioner for grant of extension as well as regular Junior Commission. The contention of Mr. Bhardwaj is that the petitioner was not found suitable even for extension of his contractual engagement, and, therefore, for him to harbour hopes of being regularised into the Army was far too fanciful, if not hallucinatory. We have perused the gradings of the petitioner for the year 1991, 1992 and 1993 and find no unreasonableness or perversity in the conclusion of the Respondent as to the unsuitability of the petitioner for

retention in the Army. Mr. Bareja has also contended that the officer concerned, who is of the rank of Lieutenant General, was merely carrying out orders of the Army Headquarters. It is his contention that contrary to the expectations of the Act and the Rules there was no exercise of mind by this officer. We find no reason to hold that the discretion which is vested with the Respondent to extend the contractual engagement of the petitioner and to regularise him, has been exercised arbitrarily or without merit.

6. We may briefly also mention the argument by Mr. Bareja that in the previous litigation no mention had been made of ACR for the year 1992-1993. It has not been denied that for this period the petitioner had been Discharged on 29.7.1993 and if the Respondents find it unnecessary to make a mention of this ACR in the previous proceedings, no adverse inference would be justified.

7. The petitioner does not possess any right to demand extension of contractual service. He has certainly no right to claim regularisation into the Army, given his dismal service record. In the exercise of our extraordinary powers under

Article 226 of the Constitution of India we would be always slow to pass orders directing reinstatement of any personnel into a disciplined armed force. In the present case we find no reason whatsoever to pass any such orders.

8. In these circumstances the writ petition is devoid of merit and is dismissed.

(VIKRAMAJIT SEN)
JUDGE

(S.L.BHAYANA)
JUDGE

OCTOBER 25, 2007
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